L/ham **MAILED 6/24/03**

Decision 03-06-077 June 19, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration and Programs.	Rulemaking 01-08-028 (Filed August 23, 2001)

ORDER DENYING REHEARING, MOTION TO STAY, AND REQUEST FOR ORAL ARGUMENT ON DECISION NO. 03-04-055

Women's Energy Matters ("WEM") has filed an application for rehearing of Interim D.03-04-055 (Decision) which approved the year 2003 energy efficiency programs for the investor owned utilities. WEM challenges as error only one matter resolved in the Decision: the approval of a pilot program to increase energy efficiency and reduce demand in San Francisco proposed by Pacific Gas & Electric Co. (PG&E) and the City of San Francisco's Department of the Environment (SFDOE). With its application WEM has filed a motion to stay the Decision with regard to only this subject matter, and has also requested oral argument before the Commission to hear its claims about it.

During the proceeding PG&E and SFDOE jointly proposed a demand reduction program for San Francisco to address the city's unique needs resulting from having two peak periods and from being a critical grid reliability risk area because of limited transmission capacity into the area combined with aging power generation facilities located in the area. This pilot program would set aside $16.3 million from PG&E's statewide energy efficiency program budget with a goal of saving 16 megawatts by 2005 for each of the two peak periods.

The proponents would first conduct a "needs assessment" in the initial months and then develop a plan for implementation.

During the proceeding, WEM opposed funding the program. It contended that the program would provide preferential treatment for commercial and industrial customers and shift funding from residential customers, particularly low-income residents in the Hunters Point community. WEM also complained that it could not comment on the proposed program elements because PG&E did not provide a budget.

In the Decision, we expressed several concerns about the proposal, but authorized it subject to several conditions. All energy efficiency programs in San Francisco were limited to $16.3 million, including the pilot program. PG&E and SFDOE were ordered to "file and serve" a needs assessment and a specific program as part of a two-year implementation plan within 30 days of the date of the decision. The plan was required to include a cost comparison of the various program elements and a budget for spending the $16.3 million. We delegated authority to approve the plan to the assigned Administrative Law Judge, in consultation with the Energy Division and the Assigned Commissioner.

In its application for rehearing WEM complains that the Commission has been misled by PG&E. It asserts that most of the $16.3 million will be spent on downtown energy efficiency programs aimed at commercial and industrial customers on the incorrect premise that the effect of the reduced demand for energy by these customers will allow the shut down of the "polluting" Hunters Point power plant. WEM cites outside the record e-mail messages ascertained the week before the issuance of the Decision that the program will not help close down the powerplant.

WEM also alleges that the Decision errs by granting PG&E the flexibility to proceed with the proposal without first requiring the production of a "real proposal" that would be subject to public comments and to community input. As a result, it asserts that the Decision violates Government Code Section 11120

which provides that the public policy of the State is to have public agency proceedings conducted in open so that the public remains informed.

In addition, the application sets forth various allegations of wrongdoing in the proceeding, including: the violation of "environmental justice and bad faith" by PG&E in misleading the Hunters Point community that the program would lead to the closure of the Hunters Point powerplant; that the poorest community in San Francisco is being used to justify a plan to benefit affluent downtown businesses; that PG&E has withheld relevant data regarding the impact of the proposed program on the Hunters Point powerplant operation; that the proposed plan is being developed in secret; that there are rumors that PG&E and SFDOE do not intend to provide "much, if any" energy efficiency benefits to the residents of Hunters Point; and that PG&E may use the funds for political purposes such as opposing possible public power ballot measures.

We have reviewed WEM's contentions and conclude that its application lacks merit. It fails to demonstrate any legal error in the Decision. WEM has failed to support its contentions with any cited legal authority and without reference to any evidence in the record. It has not complied with or set forth a convincing showing under Public Utilities Code Section 1732, which requires that an application for rehearing "shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful."

WEM's allegations primarily represent a re-argument of its position taken in the proceeding. The only statutory violation advanced relates to Government Code Section 11120. This section is part of the Bagley-Keene Open Meeting Act which establishes the procedure, terms and conditions under which State agencies are to conduct their business meetings. Although it applies to the Commission's decision-making meetings, it does not apply to the conduct of a rulemaking proceeding which is governed by the Public Utilities Code and the Commission's Rules of Practice and Procedure.

Finally, the application overlooks the fact that Ordering Paragraph (OP) No. 12 in the Decision requires that PG&E and SFDOE "file and serve" a program implementation plan. By "serve", we meant that the filing must be served on all parties, including WEM. Therefore, since the Decision is an interim decision in an ongoing rulemaking proceeding, parties are free to file comments on the implementation plan when it is filed, including even a request for hearings. In this manner, the parties are assured the opportunity to have input in the final structure and elements of the plan. We will clarify the Decision by adding a sentence in this decision denying rehearing that clearly allows the parties to file comments on the PG&E/SFDOE filing.[1] As a result, there is no need to stay the Decision or to grant the request for oral argument.

In conclusion, we have reviewed the allegations in WEM's application for rehearing, motion for stay, and request for oral argument, and do not find any legal error. Accordingly, we deny WEM's application, but clarify that it and any other party may file comments on the PG&E and SFDOE implementation plan after it is filed.

THEREFORE, IT IS ORDERED that

1. Parties may file comments on the PG&E and SFDOE implementation plan filed in compliance with Ordering Paragraph No. 12 in D.03-04-055.
2. Rehearing of Decision No. 03-04-055 is denied.
3. This proceeding remains open.

[1] Another procedure also available to WEM is to file a petition for modification pursuant to Rule of Practice and Procedure No. 47. (See Rule 47(h)).

This order is effective today.

Dated June 19, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners